

UK Legal Service Reforms Under the Legal Services Act (2007): A Brief Overview
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The history and status of the legal profession has always been different in the UK from the United States. The provision of legal advice and the drafting of documents (other than pleadings and real estate conveyances) have never been subject to exclusive regulation as the practice of law. The UK has also always had different “legal professionals”: barristers, solicitors, and scriveners.¹

Non-lawyer ownership of legal practices has been permitted in the UK since 2011 under the reforms implemented by the Legal Services Act of 2007. Under the Act, non-lawyers can join law firms as partners, law firms may be publically traded, legal services may be offered alongside non-legal services by a commercial enterprise, and lawyers can sell their law firm to either lawyers or non-lawyers.

The LSA sought to establish an objectives-based system of meta-regulation in the United Kingdom.² In this case, meta-regulation means that the state delegated the power to regulate legal entities to several private regulators which are then overseen by and responsible to a state-established body (the Legal Services Board). The LSA does not dictate prescriptive rules of qualification or behavior. Rather, the LSB and the private regulators are guided by the regulatory objectives and principles set out in the LSA. The LSB and the regulators are then responsible for overseeing a system meeting those objectives and principles.

Objectives:

- a) Protecting and promoting the public interest;
- b) Supporting the constitutional principle of the rules of law;
- c) Improving access to justice;
- d) Protecting and promoting the interests of consumers;
- e) Promoting competition in the provision of regulated services;
- f) Encouraging an independent, strong, diverse, and effective legal profession;
- g) Increasing public understanding of the citizen’s legal rights and duties;
- h) Promoting and maintaining adherence to professional principles.

Principles:

- a) Authorized persons should act with independence and integrity;
- b) Authorized persons should maintain proper standards of work;
- c) Authorized persons should act in the best interests of clients;
- d) Those who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorized persons should comply with their duty to the court to act with independence in the interests of justice; and

¹ Gillian K. Hadfield and Deborah L. Rhode, *How to Regulate Legal Services to Promote Access, Innovation and the Quality of Lawyering*, Center for Law and Social Science, Research Papers Series No. CLASS16-6 (citing Michael Burrage, *From a Gentlemen’s to a Public Profession: Status and Politics in the History of English Solicitors*, 3 Int’l J. of the Legal Profession 45 (1996)).

² Ultimately, the LSA falls short of establishing a truly objectives-based, risk-focused system. As Professor Stephen Mayson notes in his assessment of the system, during the Parliamentary process, the LSA was imbued with many “prescriptive and protective” details by interested parties, particularly with regard to ABSs and the reserved activities. See Stephen Mayson, “Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework,” Centre for Ethics and Law, Faculty of Laws, University College London: Working Paper LSR-0 (October 2018).

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- e) Affairs of clients should be kept confidential.³

What is regulated?

The LSA identifies six specific activities which it designates as “reserved activities” and regulates the practice thereof. They are:

- a) The exercise of a right of audience;
- b) The conduct of litigation;
- c) Reserved instrument activities (transactions involving real or personal property but not including wills);
- d) Probate activities;
- e) Notarial activities;
- f) The administration of oaths.⁴

Those activities can only be performed by people (“authorized persons”) granted license through one of the regulators. All activities other than these six are unregulated and may be performed by any person or entity.⁵ It is a criminal offense for an unauthorized person to perform any of the reserved activities.⁶

In a review of the LSA and the new regulatory system conducted by the UK’s Competition and Markets Authority (“CMA”), the CMA concluded that the identification of these reserved activities was, in general, a codification of traditional legal activities conducted in traditional legal roles. The LSA’s approach, the CMA concluded, did not implement a risk-based process. The CMA noted that while the reservation of some of these activities may be merited due to the risk posed to consumers (e.g. exercise of a right of audience and conduct of litigation), others probably did not need to be regulated activities.⁷

Who is regulated?

As noted above, under the LSA the six reserved activities can only be carried out by “authorized persons.” This designation covers multiple different professional licenses: solicitor, barrister, legal executive, notary, licensed conveyancer, patent attorney, trademark attorney, costs lawyer, and chartered accountant. Each license group is authorized to perform certain of the reserved activities. Barristers, solicitors, and legal executives can perform all reserved activities except for notarial activities.⁸ Notaries can perform notarial activities (and they are the only ones who may) but they can also engage in reserved instrument and probate activities. Patent and trademark attorneys can appear in court, conduct litigation,

³ Legal Services Act, Part 1, section 1(3)

⁴ Legal Services Act 2007, Part 3, Section 12(1).

⁵ In June 2016, the Legal Services Board (the government board overseeing the regulators of legal services under the LSA) published a report on the unregulated market for legal services. It estimated that over 40% of cases in which consumers sought legal help. Of that, 37% was sought from non-profit legal service providers and between 4.5 and 5.5% was sought from for profit providers. See Legal Services Board, Research Summary: Unregulated Legal Service Providers, June 2016, at <https://research.legalservicesboard.org.uk/wp-content/media/Unregulated-providers-research-summary.pdf>. Based on this data, the LSB decided not to extend the regulatory reach at this time.

⁶ Legal Services Act 2007, Sections 14 and 17.

⁷ Competition and Markets Authority, “Legal Services Market Study: Final Report,” (December 15, 2016).

⁸ Legal Services Act 2007, Schedule 4, Part 1.

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and engage in reserved instrument activities. Under the ABS sections of the LSA, legal service entities (not just the people within them) are regulated.

The LSA system leads with the legal services to be regulated but maintains a certain loyalty to the traditional professional roles (“titles”) in the UK legal system. The LSA retained those traditional markers of professional status, despite the lack of a nexus between role-based authorization and risks or benefits to consumers. The merits of this loyalty has come under question as undermining the flexibility and risk-based objectives of the Act in recent reviews of the LSA’s reforms.⁹ As Professor Mayson states, “[T]he continuing connection between the approved regulators and the professions from which they originate...perpetuates “regulation by reference to title.”¹⁰ Further, once an individual is authorized to conduct any regulated activity, their regulator assumes jurisdiction over all of their professional activities, whether “reserved” or not. This creates a strange situation in which a non-reserved activity may still be regulated, but only if being performed by an authorized (regulated) person. If a non-authorized person is performing the same non-reserved activity, no regulation touches either the activity or person.¹¹

What is the regulatory structure?

As noted above, the LSA attempted to create a system of meta-regulation by creating the Legal Services Board as the government regulator (the LSB has a lay chairperson and a majority of the Board are laypeople) approving and overseeing multiple privately-run front line regulators.¹² The LSB is accountable to Parliament, run out of the Ministry of Justice, and Board members are appointed by the Lord Chancellor.¹³

LSA requires the front-line regulators, which traditionally operated as trade associations, to create independent regulatory arms to conduct the regulation.¹⁴ The LSB is authorized to create certain governance requirements for the front-line regulators, including requiring the regulators to be governed

⁹ See Competition and Markets Authority, “Legal Services Market Study: Final Report,” (December 15, 2016). It would seem that reform of this adherence to titles may be on the horizon. The LSB has stated that future regulation should not be based on professional title. See Stephen Mayson, “Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework,” Centre for Ethics and Law, Faculty of Laws, University College London: Working Paper LSR-0 (October 2018). The Legislative Options Review suggested that titles may still have a role to play as brand/quality markers separate from the regulatory system. *Id.*

¹⁰ See Stephen Mayson, “Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework,” Centre for Ethics and Law, Faculty of Laws, University College London: Working Paper LSR-0 (October 2018).

¹¹ For example, a solicitor will be regulated by the SRA when performing the activity of will preparation (not a reserved activity). Joe Schmo, bloke off the street, may also offer will preparation services without any regulatory authorization or oversight (probably for significantly less money). The public, however, generally does not know or understand the distinction between regulated and un-regulated providers and assumes all legal activities are, in fact, regulated. See *Id.* This issue is, again, the result of the LSA’s loyalty to traditional legal titles and associated activities, rather than a truly independent risk-based approach. The application is slightly different for ABSs (see *infra*).

¹² Stephen Mayson, “Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework,” Centre for Ethics and Law, Faculty of Laws, University College London: Working Paper LSR-0 (October 2018).

¹³ Legal Service Act 2007, Schedule 4.

¹⁴ Legal Services Act 2007, Part 4, Sections 29 and 30. The Act required the lobbying and regulatory functions to split. It also created a Legal Ombudsman office to independently respond to consumer complaints.

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by a board with a lay chairperson and majority of lay members. The LSB also must approve the front-line regulators' rules and processes with the ultimate goal of ensuring that the regulators are advancing the LSA's regulatory objectives.¹⁵ The LSB reviews the regulators' proposed rule changes, monitors performance, researches and analyzes the legal services markets overall, and suggests changes to the regulatory scheme as necessary. The LSB can also investigate the front-line regulators for failing to uphold regulatory principles and objectives, including the separation between regulatory efforts and trade association efforts.

The front-line regulators are closely aligned with the reserved activities, which are, in turn, closely aligned with traditionally established legal roles in the UK. For example, the Bar Standards Board ("BSB") regulates the activities of barristers and the Solicitors Regulation Authority ("SRA") regulates the activities of solicitors.

What are the ABSs and how are they regulated?

The LSA permitted participation in law firms by those who are not qualified lawyers. Participation can be as owners, managers, or investors. Entities with lay ownership, management, or investment are designated Alternative Business Structures (ABSs) under the Act.¹⁶ An ABS is either (a) a firm where a non-lawyer is a manager of the firm or has an ownership-type interest in the firm or (b) a firm where "another body" is a manager of the firm or has an ownership-type interest in the firm and at least 10 percent of the "body" is controlled by non-lawyers.¹⁷ The ABS must always have at least one manager who is an authorized person under the LSA.¹⁸ ABSs may offer non-legal services alongside legal services.¹⁹

Multiple regulators are approved to regulate ABSs, including the SRA, the BSB, the Council of Licensed Conveyancers, the Institute for Chartered Accountants, and the Intellectual Property Regulation Board.

ABSs are regulated as entities and each authorized person within the entity is independently regulated and subject to discipline. Regulators have maintained that regardless of ownership status, control over the right to practice law must remain in the hands of licensed legal professionals.²⁰ The regulations do this by designating certain roles in the ABS as "authorized role holders." These include, under the SRA for example, owners (those with a material interest), managers, and compliance officers. The SRA must

¹⁵ Legal Services Act 2007, Schedule 4.

¹⁶ Stephen Mayson, "Independent Review of Legal Services Regulation: Assessment of the Current Regulatory Framework," Centre for Ethics and Law, Faculty of Laws, University College London: Working Paper LSR-0 (October 2018).

¹⁷ Alternative Business Structures, Law Society (May 1, 2018), at <https://www.lawsociety.org.uk/support-services/advice/practice-notes/alternative-business-structures/>.

¹⁸ *Id.*

¹⁹ *Id.* Note that the ability to offer non-legal services alongside legal services differentiates this structure from those permitted in Washington, D.C. under its Rule 5.4(b) which permits lawyers to enter into business with non-lawyers (including non-lawyer owners or managers) but the sole purpose of the business must be providing legal services. See Washington, D.C. Bar, Rules of Professional Conduct, Rule 5.4: Professional Independence of a Lawyer, available at <https://www.dcbbar.org/bar-resources/legal-ethics/amended-rules/rule5-04.cfm>.

²⁰ Solicitors Regulation Authority, SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011, Rule 8.5.

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approve all authorized role holders.²¹ The SRA requires ABSs to have both a legal and financial compliance officer.²² The compliance officer is responsible for ensuring that the entity and all of its interest holders, managers, and employees comply both with the terms of its license and with regulations applicable to its activities (reserved and potentially non-reserved depending on the terms of the license).²³ If an entity, or those within it, violate the terms of the license or the rules of professional conduct, the compliance officer has a duty to correct and report to the regulator.

The front-line regulator runs the licensing process for ABSs. The ABS application must outline which reserved activities the entity plans to offer, professional indemnity insurance information, firm structure details (including authorized role holders), and incorporation details if applicable.²⁴ To grant a license, the SRA needs to be satisfied that, for example, the proposed ABS will comply with professional indemnity insurance and compensation fund requirements, appropriate compliance officers have been appointed, the authorized role holders are approved, and the lawyer manager is qualified. The SRA may refuse to grant the license if it is not satisfied that these requirements have been shown, or if the applicant has been misleading or inaccurate, or if it feels that the ABS is “against the public interest or inconsistent with the regulatory objectives” set out in the LSA.²⁵ The SRA may also grant a license subject to conditions it deems necessary.²⁶

What is the current status of ABSs in the UK?

As of February 2019, it appears that the regulators have licensed over 800 entities as ABSs.²⁷ Most entities seeking ABS license are existing legal services businesses converting their license; one-fifth are new entrants.²⁸ Lawyer-ownership remains the dominant form with three-fifths of ABSs having less than 50 percent non-lawyer ownership.²⁹ Approximately one-fifth of ABSs are fully owned by non-lawyers

²¹ Practicing solicitors with no issues on their license are deemed appropriate authorized role holders under the SRA rules. Alternative Business Structures, Law Society (May 1, 2018), at <https://www.lawsociety.org.uk/support-services/advice/practice-notes/alternative-business-structures/>.

²² Solicitors Regulation Authority, SRA Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011, Rule 8.5.

²³ *Id.*

²⁴ Solicitors Regulation Authority, New Firm Applications (September 29, 2017), at <http://www.sra.org.uk/solicitors/firm-based-authorisation/authorisation-recognition.page>.

²⁵ Alternative Business Structures, Law Society (May 1, 2018), at <https://www.lawsociety.org.uk/support-services/advice/practice-notes/alternative-business-structures/>.

²⁶ *Id.*

²⁷ The SRA maintains a list of all registered ABSs at <https://www.sra.org.uk/solicitors/firm-based-authorisation/abs/abs-search.page>. This is likely a small percentage of all the legal firms in the United Kingdom. In 2015, for example, there were approximately 10,300 solicitors firms in the UK. See Mari Sako, “Big Bang or Drop in the Ocean: The Authorized Revolution in Legal Services in England and Wales,” Thomson Reuters Forum Magazine (Oct. 8, 2015), available at <https://blogs.thomsonreuters.com/answerson/abs-ldp-drop-ocean-england-wales/>.

²⁸ See Legal Services Board, *Evaluation: ABS and investment in legal services 2011/12-2016/17 – Main Report*, 4 (June 2017), available at <https://research.legalservicesboard.org.uk/wp-content/media/Investment-research-2017-Report-Main-report.pdf>.

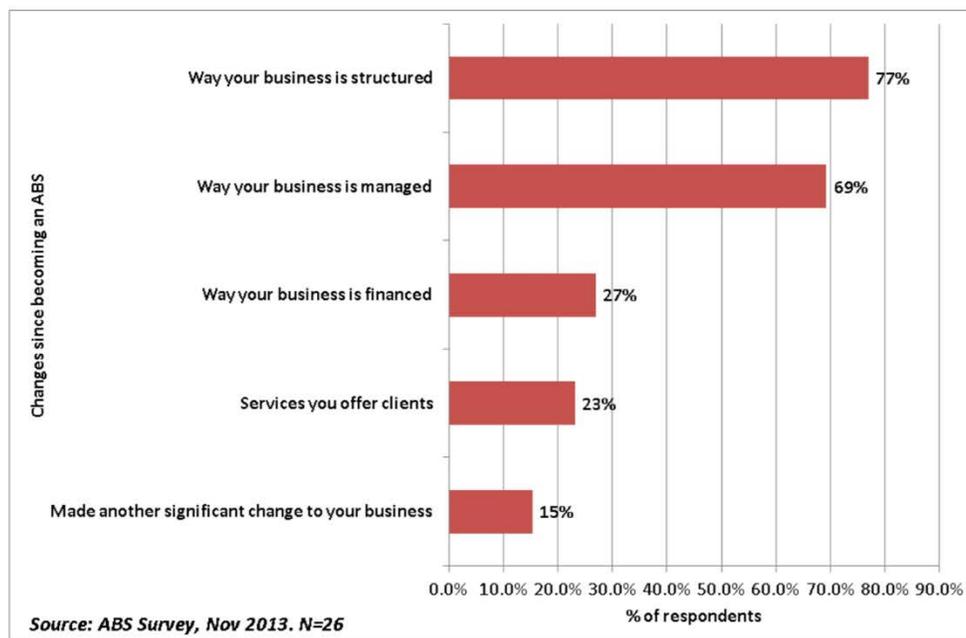
²⁹ *Id.*

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and approximately one-fifth are fully owned by lawyers with some proportion of non-lawyer managers.³⁰ Some non-UK entities, including LegalZoom, have sought ABS licensing.³¹

A 2014 report by the SRA sought to understand how firms changed on gaining an ABS license. Most often, firms changed either their structure or their management under the new regulatory offering.³²

Figure 2.12: Changes since becoming an ABS



Twenty-seven percent changed the way the business was financed. The SRA found that investment was sought most often to use for technology, to change the services offered, and for marketing.³³ A 2018 report by the Legal Services Board found that ABSs were three times as likely as traditionally organized entities to use technology and ABSs, as well as newer and larger providers, have higher levels of service innovation.³⁴

³⁰ *Id.*

³¹ John Hyde, *LegalZoom Enters Market with ABS License*, *The Law Society Gazette* (Jan. 7, 2015), available at <https://www.lawgazette.co.uk/practice/legalzoom-enters-market-with-abs-licence/5045879.article>.

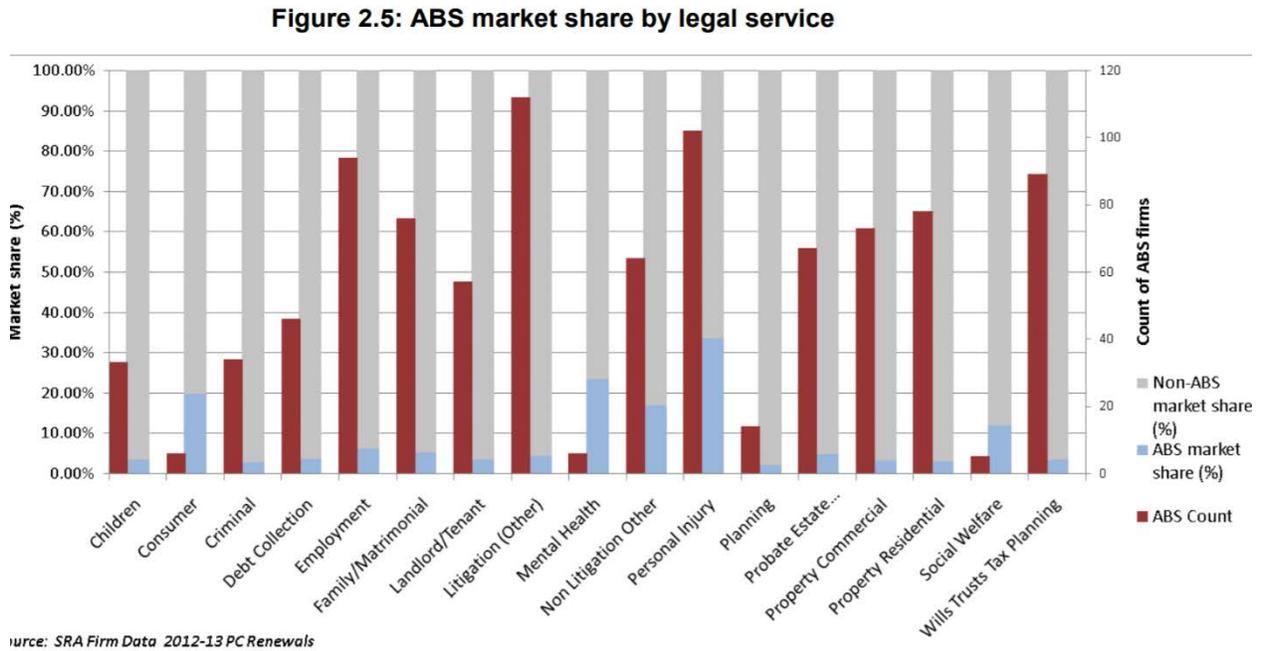
³² Solicitors Regulation Authority, “Research on Alternative Business Structures (ABSs): Findings from surveys with ABSs and applicants that withdrew from the licensing process,” 17 (May 2014), available at <https://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page>.

³³ *Id.*

³⁴ Legal Services Board, “Research Summary: Technology and Innovation in Legal Services,” (November 2018), available at <https://research.legalservicesboard.org.uk/wp-content/media/Innovation-survey-2018-web-FINAL.pdf>.

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ABS market impact, at least as of 2014, can be seen in the following chart:³⁵



ABSs appear to be most significant in the personal injury market, as well as mental health, non-litigation other (which includes M&A and probate), consumer (includes product liability), and social welfare (includes disability benefits). The personal injury sector provides interesting information on potential conflicts of interest concerns around non-lawyer ownership as insurance companies have sought ABS licenses to sidestep referral fee limitations.³⁶ It should be noted that there has not been evidence of increased consumer complaints against lawyers operating in an ABS structure (although the data is limited).³⁷

What has been the impact of the ABS reforms on UK legal market?

The impact of the ABS reforms on the UK legal market is a point of some debate. It seems clear that that sometimes giddily projected transformation of the UK legal market has not occurred but the reforms do

³⁵ Solicitors Regulation Authority, “Research on Alternative Business Structures (ABSs): Findings from surveys with ABSs and applicants that withdrew from the licensing process,” 12 (May 2014), available at <https://www.sra.org.uk/sra/how-we-work/reports/research-abs-executive-report.page>.

³⁶ See Nick Robinson, *When Lawyers Don’t Get all the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 *Geo. J. Legal Ethics* 1, 23-28 (2016). Of course, the personal injury sector in the United States already has similar issues of conflicts through litigation financing and liability insurance structures.

³⁷ See Judith K. Morrow, *UK Alternative Business Structures for Legal Practice: Emerging Market and Lessons for the US*, 47 *Geo. J. Int’l L.* 665, 668 (2016).

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seem to be pushing technological and service advances throughout the sector.³⁸ Many of the early adopters of ABS licensing used the opportunity to bring in or elevate non-lawyers in the business, not to change their practice offerings or client base.³⁹ Accounting firms have embraced the new opportunity to offer legal services alongside their accounting services.⁴⁰

There have been several examples of more disruptive or innovative ABS entities, including Riverview Law (long-term contracts with business clients to handle routine legal work, including litigation, facilitated by a highly developed technical platform and using lawyers and non-lawyers), Co-Operative Legal Services (legal arm of a well-recognised UK brand offering banking, grocery, and funeral services; legal offerings were a range of services at flat fees), and LegalZoom.⁴¹ Interestingly, Riverview Law was recently acquired by Ernst and Young (but not its well-developed technology platform) and Co-Operative Legal Services was subsumed into the entity's funeral services.⁴² As for LegalZoom, the ABS status will enable the online legal document completion service to also offer full legal advice and representation, enabling scale, consistency, and quality-control within the one entity. The company has partnered with and acquired solicitors firms.⁴³

The access to justice side of the equation is even more difficult to assess, in part because the UK recently significantly reduced what had been a robust government-run legal aid system.⁴⁴ It does seem apparent, and not really surprising, that ABS reforms alone are not sufficient to effect dramatic changes in access to justice.⁴⁵ Research indicates that most low and moderate income consumers face two fundamental

³⁸ Legal Services Board, "Research Summary: Technology and Innovation in Legal Services," (November 2018), available at <https://research.legalservicesboard.org.uk/wp-content/media/Innovation-survey-2018-web-FINAL.pdf>. See also John Hyde, "News Focus: Five years on, did the ABS really change anything?," *The Law Society Gazette* (April 24, 2017), available at <https://www.lawgazette.co.uk/news-focus/news-focus-five-years-on-did-abs-really-change-anything/5060745.article> ("The market has not come to be dominated by new entrants, but the changes have caused firms to raise their game. About 75% of SRA-approved ABSs are existing firms: traditional practices that many expected to wither in this brave new world. Many have ditched the fixed-fee model, incorporated new technology and become more flexible.").

³⁹ See Judith A. McMorrow, *UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the U.S.*, 47 *Geo. J. Int'l Law* 665, 682 (2016).

⁴⁰ See John Hyde, "News Focus: Five years on, did the ABS really change anything?," *The Law Society Gazette* (April 24, 2017), available at <https://www.lawgazette.co.uk/news-focus/news-focus-five-years-on-did-abs-really-change-anything/5060745.article> (noting that there are almost 300 accounting practices authorized to provide legal services). The SRA has imposed conditions on licenses obtained by accounting, PwC for example, to address conflicting disclosure requirements and other concerns. See Neil Rose, "SRA imposes conditions on PwC's new ABS license," *Legal Future Blog* (Oct. 13, 2016), available at <https://www.legalfutures.co.uk/latest-news/sra-imposes-conditions-pwcs-new-abs-licence>.

⁴¹ For a detailed discussion please see Judith A. McMorrow, *UK Alternative Business Structures for Legal Practice: Emerging Models and Lessons for the U.S.*, 47 *Geo. J. Int'l Law* 665, 682 (2016).

⁴² Co-operative Legal Services suffered from difficulties impacting its parent company, and the banking arm in particular, apparently in the wake of the financial crisis. *Id.*

⁴³ LegalZoom, Press Release, "LegalZoom UK to Acquire Law Firm," (Dec. 7, 2015).

⁴⁴ The Legal Aid, Sentencing and Punishment of Offenders Act 2012, Part 2, c. 10 (Eng.), <http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted> (reducing legal aid funding).

⁴⁵ See Nick Robinson, *When Lawyers Don't Get all the Profits: Non-Lawyer Ownership, Access, and Professionalism*, 29 *Geo. J. Legal Ethics* 1, 23-28 (2016).

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problems in accessing legal services: an inability to identify legal problems as legal in their own lives and an inability to make informed (both on price and quality) decisions to find legal help.⁴⁶

The UK's Competition and Market Authority ("CMA") conducted a review of the legal services sector in 2016 and found generally that the market still did not serve individual consumers and small businesses well.⁴⁷ The fundamental issues around the consumer information gap and inability to assess and compare the price of legal services continue to be significant obstacles.⁴⁸ The CMA felt that quality and price transparency were sufficiently problematic as to justify regulatory intervention by the LSB.

To that end, in a good example of how a responsive, objectives-driven regulatory system might work, the SRA submitted proposed new Transparency Rules to the LSB in June 2018.⁴⁹ The rules were approved in August 2018 and came into effect in December 2018.⁵⁰ The rules require law firms and solicitors to publish information on the prices they charge for a number of services. They also implemented a digital badge to be displayed on regulated entities' websites which explains the protections offered by regulation.⁵¹ In the development of these rules, the SRA commissioned three studies of the transparency needs of the public in the areas of conveyancing, small businesses, and legal services generally.⁵² These studies were used to both inform and test the proposed rules.⁵³ As the Authority noted, "Key to improving accessibility is understanding what factors the public consider and what information they would like to know more about, when they have a potential need for professional legal support."⁵⁴ Given the recent implementation of these transparency rules, the impact on access and competition is not yet known.

⁴⁶ See generally Rebecca Sandefur, *Access to Civil Justice and Race, Class and Gender Inequality*, *Annu. Rev. Sociol.* 2008, 34: 339-58.

⁴⁷ Competition and Markets Authority, "Legal Services Market Study: Final Report," 4 (December 15, 2016).

⁴⁸ *Id.*

⁴⁹ Solicitors Regulation Authority, "Price Transparency in the Legal Services Market: A Study of Small Businesses with Legal Issues, Why we commissioned this research," available at <https://www.sra.org.uk/sra/how-we-work/reports/price-transparency.page>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² The reports are fascinating and available here: conveyancing: <https://www.sra.org.uk/sra/how-we-work/reports/price-transparency-legal-services-market.page>; legal services: <https://www.sra.org.uk/sra/how-we-work/reports/better-information.page>; and small businesses: <https://www.sra.org.uk/sra/how-we-work/reports/price-transparency.page>.

⁵³ *Id.*

⁵⁴ Solicitors Regulation Authority, "Better Information in the Legal Services Market: Summary," available at <https://www.sra.org.uk/sra/how-we-work/reports/better-information.page>.